

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES D. WARD and U.S. POSTAL SERVICE,
POST OFFICE, Birmingham, AL

*Docket No. 02-1357; Submitted on the Record;
Issued November 26, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant timely filed a claim for continuation of pay; (2) whether appellant has met his burden of proof in establishing that he was entitled to compensation for wage loss subsequent to February 24, 1998 causally related to his federal employment; and (3) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

This is the second time this case has been before the Board. To briefly summarize the facts, appellant, a 49-year-old city mail carrier, filed a claim for benefits on May 23, 1997, alleging that he sustained a lower back injury on November 26, 1996. By decisions dated August 25, 1997, June 18, 1998 and January 19, 1999, the Office denied appellant's claim, finding that he failed to establish that the claimed event, incident or exposure occurred at the time, place and in the manner alleged. In a decision issued January 19, 2001,¹ the Board set aside the January 19, 1999 Office decision, finding that appellant had submitted evidence sufficient to establish that he experienced the employment incident at the time, place and in the manner alleged on November 26, 1996. The Board therefore remanded the case for the Office to refer the case to an appropriate physician to submit a rationalized medical opinion on whether appellant sustained any injury or disability attributable to the November 26, 1996 employment injury.

The Office referred the case to Dr. Gordon J. Kirschberg, Board-certified in psychiatry and neurology, who stated in a March 13, 2001 report that appellant's November 26, 1996 work injury contributed to a chronic degenerative low back disease, and that the injury caused an acute low back strain. He advised that because of the 1996 injury appellant had sustained a temporary, but not permanent, aggravation of a preexisting condition, and that his low back strain would have caused him to be off work from November 30 to December 6, 1996, when he returned to

¹ Docket No. 99-1102 (issued January 19, 2001).

full duty. Dr. Kirschberg opined that appellant's current residuals and problems were more related to degenerative disc disease and to his previous surgery than to the temporary aggravation he experienced in November 1996.

By decision dated March 22, 2001, the Office accepted the conditions of lumbar strain and temporary aggravation of the underlying lumbar degenerative disc disease, which, it found, ceased as of December 6, 1996, the date appellant returned to full duty. The Office also found that appellant was not entitled to continuation of pay from November 30, 1996 through January 14, 1997 because he failed to file his claim within the prescribed 30-day period.

By letter dated March 29, 2001, appellant requested an oral hearing, which was held on September 6, 2001. At the hearing, appellant asserted that he reported his injury to his supervisor on November 26, 1996, the date it occurred.

By decision dated November 20, 2001, an Office hearing representative affirmed the Office's March 22, 2001 decision, finding that appellant failed to establish that he had any continuing disability subsequent to December 6, 1996, and that he failed to timely file a claim for continuation of pay.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the November 20, 2001 decision of the hearing representative of the Office is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative. The decision of the Office dated November 20, 2001 is therefore affirmed.

By letter dated January 14, 2002, appellant requested reconsideration of the hearing representative's November 20, 2001 decision. Appellant submitted reports dated July 16 and August 18, 1998 from Dr. Henry Ruiz, a Board-certified neurosurgeon; and copies of two diagnostic tests. These reports noted findings on examination, related appellant's complaints of back pain and updated his condition, but did not contain an opinion regarding whether appellant had any current disability or residuals stemming from the November 26, 1996 work injury.

By decision dated February 15, 2002, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.607, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.² Evidence that repeats

² 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.³

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted was either previously considered and rejected by the Office in a prior decision, or is not pertinent to the issue on appeal. The reports from Dr. Ruiz are cumulative and repetitive of evidence, which was considered by the Office in previous decisions and are not pertinent to the issue of whether appellant currently has any residuals from his November 26, 1996 work injury. Additionally, appellant's January 14, 2002 letter failed to show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits. The Board therefore affirms the Office's February 15, 2002 decision.

The decisions of the Office of Workers' Compensation Programs dated February 15, 2002 and November 20, 2001 are hereby affirmed.

Dated, Washington, DC
November 26, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Howard A. Williams*, 45 ECAB 853 (1994).